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7  
8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
9 OF THE STATE OF CALIFORNIA

10	In the Matter of	)	FILE NO. 694065
11	THE COMMISSIONER OF BUSINESS	)	
12	OVERSIGHT OF THE STATE OF	)	STATEMENT OF ISSUES
13	CALIFORNIA,	)	
14	Complainant,	)	
15	v.	)	
16	HOWARD MARK GERBER,	)	
17	Respondent.	)	

18 Complainant, the Commissioner of Business Oversight (“Commissioner”) is informed and  
19 believes, and based upon such information and belief, alleges and charges Respondent Howard  
20 Mark Gerber (“Gerber”) as follows:

21 **I.**  
22 **INTRODUCTION**

23 Pursuant to Financial Code sections 50141 and 50327, the Commissioner seeks to deny the  
24 issuance of a mortgage loan originator (“MLO”) license to Gerber on the grounds that: 1) the  
25 applicant has not demonstrated such financial responsibility, character, and general fitness as to  
26 command the confidence of the community and warrant a determination that he will operate  
27 honestly, fairly, and efficiently as a MLO; and 2) the applicant made an untrue statement on his  
28 MLO license application with the intent to impede, obstruct, or influence the administration or

1 enforcement of the law governing MLOs in California.

2 **II.**

3 **THE APPLICATION**

4 On or about June 20, 2014, Gerber filed an application for a MLO license with the  
5 Commissioner (file number 694065; hereinafter “application”) pursuant to the California  
6 Residential Mortgage Lending Act (“CRMLA,” Fin. Code § 50000 et seq.); in particular,  
7 Financial Code section 50140. The application was submitted through the National Mortgage  
8 Licensing System (“NMLS”) on the Form MU4.

9 At all relevant times since the filing of his application, Gerber has been employed and  
10 sponsored by JAC Financial Inc., which is licensed under the CRMLA, license number 4150064.

11 On his original license application, Gerber answered “no” to Question (K)(5), “Has any  
12 State or federal regulatory agency or foreign financial authority or self-regulatory organization  
13 (SRO) ever...revoked your registration or license?” However, a subsequent review of public  
14 records available from the California Bureau of Real Estate (“BRE,” formerly the Department of  
15 Real Estate or “DRE”) revealed that the BRE had previously taken regulatory action against  
16 Gerber that resulted in the revocation of his license and licensing rights.

17 The Commissioner instructed Gerber to amend his response to Question (K)(5) and  
18 provide an explanation and supporting documentation. Gerber filed an amended MU4 on August  
19 1, 2014, changing his answer to Question (K)(5) and providing an explanation; however, he still  
20 did not provide any supporting documentation.

21 The Commissioner again instructed Gerber to provide supporting documentation and  
22 provide a more detailed explanation. On August 25, 2014, Gerber provided documentation which  
23 revealed that on March 4, 1997, the BRE had revoked his license and licensing rights for  
24 employing and compensating unlicensed individuals to perform acts that required a real estate  
25 broker or salesperson license, for not adequately managing his company’s trust fund activities, for  
26 collecting advanced fees without using approved materials, and for failing to provide borrowers  
27 with required mortgage loan disclosure statements.

28 California Financial Code section 50512(b) provides:

1 It is unlawful for any person to knowingly make an untrue statement to the  
2 commissioner during the course of licensing, investigation, or examination, with  
3 the intent to impede, obstruct, or influence the administration or enforcement of  
4 any provision of this division.

5 **III.**

6 **CONCLUSION**

7 The Commissioner finds, by reason of the foregoing, that Gerber has made an untrue  
8 statement to the Commissioner during the course of licensing with the intent to impede, obstruct,  
9 or influence the administration or enforcement of the provisions of the CRMLA.

10 Further, the Commissioner finds that in light of the revocation of Gerber’s BRE license  
11 and licensing rights and the bases for that revocation, Gerber has not demonstrated such financial  
12 responsibility, character, and general fitness as to command the confidence of the community and  
13 warrant a determination that he will operate honestly, fairly, and efficiently within the purposes of  
14 the CRMLA.

15 California Financial Code section 50327(a) provides, in pertinent part:

16 The commissioner may, after notice and a reasonable opportunity to be heard,  
17 deny, decline to renew, suspend, or revoke any license if the commissioner finds  
18 that...the licensee has violated any provision of this division or any rule or order of  
19 the commissioner thereunder.

20 California Financial Code section 50141(a) provides, in pertinent part:

21 The commissioner shall deny an application for a mortgage loan originator license  
22 unless the commissioner makes at a minimum the following findings:

23 ...

24 (3) The applicant has demonstrated such financial responsibility, character, and  
25 general fitness as to command the confidence of the community and to warrant a  
26 determination that the mortgage loan originator will operate honestly, fairly, and  
27 efficiently within the purposes of this division.

28 The findings set forth above constitute grounds under Financial Code sections 50141 and  
50327 to deny the issuance of a MLO license to Gerber.

THEREFORE, the Commissioner asserts that she is justified under California Financial  
Code sections 50141 and 50327 in denying the issuance of a mortgage loan originator license to  
Howard Mark Gerber.

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WHEREFORE, the Commissioner prays that the application for a mortgage loan originator license filed by Howard Mark Gerber on June 20, 2014 be denied.

Dated: December 4, 2014

JAN LYNN OWEN  
Commissioner of Business Oversight

By: \_\_\_\_\_  
Joyce Tsai  
Senior Corporations Counsel  
Enforcement Division